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**Module 10:  
CERCLA and Facility Disposition:  
Deactivation and Decommissioning**

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## Module Objectives

- ❑ Summarize the DOE policy on decommissioning under CERCLA
- ❑ Identify the role of the Defense Nuclear Facilities Safety Board in DOE's decommissioning program.

## Does CERCLA Apply?

### □ Logic behind DOE Policy Decision

- What is meaning of “environment” in a CERCLA context?
- Conclusion: Buildings may pose threats
- DOE is lead agency for its sites
- DOE Order 5400.4 requires DOE to “respond to any release...in a manner consistent with the NCP regardless of listing on the NPL ”

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- [www.em.doe.gov/dd/inqbtrj.html](http://www.em.doe.gov/dd/inqbtrj.html) is the internet address for the policy
- Definition of “environment” includes all natural media under U.S. jurisdiction. CERCLA does not generally address releases which are entirely within buildings because the presence of hazardous substances within a building does not constitute a release of such substances into the environment. Hazardous substances within a building, however, may pose a substantial threat of a release that may require a CERCLA response. Determining whether a threat of a release is substantial will depend on the specific circumstances present at a facility.
- Under the authority delegated by Executive Order 12580, DOE is responsible for evaluating site conditions to determine if conditions or anticipated activities at facilities subject to decommissioning pose a substantial threat of release. So that EPA can fulfill its responsibility to ensure compliance with CERCLA requirements, including remedy selection, at NPL facilities, DOE operations Offices will consult with EPA Regions and share information as determined by the DOE Operations Office and affected EPA Region. In the event EPA disagrees with DOE's determination as to the presence of a release or substantial threat of release, EPA and DOE should make every effort to resolve the dispute in a manner satisfactory to both parties. If resolution is not possible and EPA determines that a threat of release is substantial, then under section 106 of CERCLA, with the concurrence of the Attorney General, EPA may order DOE to take appropriate action. EPA may also issue a CERCLA section 106 order to any other party, including past or present DOE contractors, that is liable under CERCLA section 107. EPA may further exercise any authority that is provided under an applicable IAG to “stop work” until EPA concerns are satisfactorily addressed. RCRA authorities may also be available to EPA. Specifically, these authorities may address waste management, corrective action, and closure requirements that may be established or enforced through regulations, permits, orders, or agreements.

## Policy Framework

- ❑ May 22, 1995 Policy on Decommissioning of DOE Facilities Under CERCLA
- ❑ Approach agreed on by DOE and EPA
- ❑ Decommissioning will be conducted as a non-time critical removal action
- ❑ Note that deactivation is not covered by the policy framework

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- Although the full range of CERCLA response actions may be applicable to decommissioning activities, non-time critical removal actions should be used for decommissioning, consistent with this Policy. The alternative approaches available to conduct decommissioning projects typically are clear and very limited. This often will eliminate the need for the more thorough analysis of alternatives required by remedial actions. Non-time critical removal action requirements provide greater flexibility to develop decommissioning plans that are appropriate for the circumstances presented. Statutory time and dollar limits on removal action do not apply to removal action conducted by DOE, which increases the scope of projects that may be addressed by DOE removal action. Most importantly, non-time critical removal actions usually will provide benefits to worker safety, public health, and the environment more rapidly and cost-effectively than remedial actions. For these reasons, DOE may exercise removal action authority to conduct decommissioning whenever such action is authorized by CERCLA, the NCP, and Executive Order 12580. To ensure an adequate regulatory role in the removal planning and decision process, EPA Regions are encouraged to communicate with DOE Operations Offices concerning the level of consultation EPA believes is appropriate for specific decommissioning projects. Such an approach will provide greater assurances that the removal action will be consistent with CERCLA requirements and any subsequent remedial action that may be necessary.

## Compliance with Other Requirements

- ❑ Policy also provides that
  - Activities must comply with applicable requirements of existing FFAs, Site Treatment Plans, permits and orders, and other authorities
  - Specifically calls out States with RCRA authority as potentially being involved
- ❑ DOE must coordinate with EPA for oversight and remedy selection.

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- Decommissioning activities must comply with all applicable requirements established by any existing IAGs, Federal Facility Agreements (FFAs), Site Treatment Plans required under the Federal Facility Compliance Act, permits and orders issued pursuant to authorized State and Federal programs, and other applicable requirements. Decommissioning activities should comply with relevant and appropriate standards to the extent practicable, as provided by the NCP, and as necessary to contribute to the efficient performance of any long term remedial action.
- In particular, States authorized by EPA to implement and enforce State hazardous waste programs in lieu of RCRA may have authority under such programs to enforce requirements applicable to decommissioning activities. These requirements include waste management, corrective action, and closure requirements which may be established or enforced through regulations, permits, orders, or agreements. The degree to which State hazardous waste and other requirements may affect decommissioning projects will depend on a number of site-specific factors including the scope of State authorization, and whether the facility to be decommissioned is included within a RCRA-permitted facility or is otherwise subject to RCRA requirements. EPA and DOE intend to work with authorized States to coordinate RCRA and CERCLA authorities to the maximum extent practicable in order to prevent unnecessary duplication or delay in decommissioning projects subject to both authorities.

## Involvement of Other Parties

- ❑ DNFSB has prepared analyses and tracked implementation of facility disposition activities
- ❑ Local authorities, future leaseholders, or other site-specific parties may also have a role to play

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- *Regulation and Oversight of Decommissioning Activities at Department of Energy Defense Nuclear Facilities.* Defense Nuclear Facilities Safety Board Technical Report, DNFSB/TECH-12, August 1996.
- The Board's objectives during decommissioning is identical to its objective during any other phase: ensure the DOE provides adequate protection of worker and public health and safety at defense nuclear facilities. Congress specifically tasked the Board with reviewing and evaluating "the *content* and *implementation* of the standards relating to the design, construction, operation and *decommissioning* of defense nuclear facilities of the Department of Energy." 42 U.S.C. § 2286a(a)(1) (emphasis added). Such standards include DOE safety orders, regulations, and other requirements at each defense nuclear facility. After these reviews and evaluations are completed, the Board recommends to the Secretary of Energy those specific measures that should be adopted to ensure that public health and safety are adequately protected.
- Thus, the Board's principal oversight function during the decommissioning phase of a facility is to ensure that appropriate nuclear safety rules, orders, and procedures are developed and then put in practice while the facility is being taken out of service. The Board and its staff discharge this responsibility for overseeing the decommissioning phase by reviewing decommissioning plans and schedules, conducting inspections and technical reviews, and by evaluating the development and implementation of hazards analyses, Safety Analysis Reports, Standard/ Requirements Identification Documents (S/RIDs) and other essential components of integrated safety management plans tailored to the hazards at each defense nuclear facility. These reviews and evaluations are currently structured to further the implementation of Board Recommendations 90-2, 94-5, and 95-2.

## Key Issues

- ❑ When does “decommissioning” begin?
- ❑ How do FFAs call for facility disposition activities to be handled?
- ❑ What are appropriate levels to decommission facilities to if they are being reused?
- ❑ Who wants to be involved with and oversee facility disposition?

## Other Drivers

- ❑ Integrated Safety Management (ISM) also is an important element of planning facility disposition activities
- ❑ NETO has developed specific training on applying CERCLA and ISM
- ❑ Next delivery is September in Savannah River, followed by Northwest site in November, 1999

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- DOE Standard 1120-98 (May 1998), *Integration of Environment, Safety, and Health into Facility Disposition Activities*, Summarizes the role of ISM in these programs.



## Module Summary

- r Decommissioning will be conducted as a non-time critical removal action
- r DOE is responsible for evaluating site conditions to determine if conditions or anticipated activities at facilities subject to decommissioning pose a substantial threat of release.
- r Decommissioning activities should comply with relevant and appropriate standards to the extent practicable, as provided by the NCP, and as necessary to contribute to the efficient performance of any long term remedial action